IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24490 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMANLAL BHIKHAJI SHAH - Petitioner
Versus
SHARMI TUBE - TO BE SERVED THRO' ITS PARTNER OPPNO.2 TO 7 AND ORS.- Respondents

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Appearance :
MR ADIL R MIRZA for Petitioner:1
MR HRIDAY BUCH for Respondents:2-5,7

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 23/07/2007

ORAL JUDGMENT

1. The present petition has been preferred against the

order dated 19th September, 2006 passed by the learned Civil Judge (S.D.) Valsad below Exh.77 in Special Civil Suit No.174 of 1997 whereby the present petitioner (original plaintiff) was not allowed to examine his own witness i.e. the accountant.

2. Having heard the learned counsels for both the sides and looking to the facts and circumstances of the case, the order passed by the Trial Court i.e. 3rd Additional Senior Civil Judge, Valsad dated 19th September, 2006 below Exh.77 in a Special Civil Suit No.174 of 1997 is quashed and set aside for the following facts and reasons.

2.1 It appears from the facts of the case that present applicant is original plaintiff who has filed suit for recovery of money. Some books of account were recovered from the original plaintiff during the raid carried out by Excise Department and all such books of account are lying with the office of Excise department of the Central Government. Thereafter, certified copies of those documents were obtained, and, therefore, some time has been consumed in examination of the accountant of the

plaintiff.

2.2 This aspect of the matter has not been properly appreciated by the Trial Court. Similarly, there is an accident caused to the accountant of the plaintiff. Thus, the witness met with the accident, and therefore also, some time has been consumed in examining the said witness.

2.3. It is stated in the order passed by the Trial Court that four months time was given to the plaintiff but he has not examined witness and therefore right to examine the witness was closed.

2.4 Looking to the aforesaid two circumstances, the order passed by the Trial Court deserves to be rejected.

3. Looking to the facts and circumstances of the case, examination of the witness of the plaintiff i.e. accountant is very much important as the books of accounts have been presented by the plaintiff and the same have to be proved by the plaintiff with the help of evidence given by accountant. Examination of witness should be allowed, so as to arrive at

correct conclusion of the dispute.

4. Thus, in the interest of justice and looking to the facts of the case the order of the Trial Court is hereby quashed and set aside. Petitioner (original plaintiff) is directed to examine his witness without causing any delay. The examination of this witness is not foreclosing any of the defences raised by the original defendants including that of the fact that they are not the partners of the original defendant no.1.

5. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

(***D.N.PATEL, J.***)

Amit/-